

Thomas Turner/R5/USEPA/US

06/03/2004 12:42 PM

To

Subject Fw: Sanicem Landfill - BRG loan dox



Hi. I just got a message from Padma. She asked me to convey that has further reviewed the administrative legal guidance on this matter and that she has some serious reservations from a grants law and a CERCLA enforcement perspective about Jeff Kimble taking on the role of Site Manager under the loan agreement, since he is initially and overall the US EPA On-Scene Coordinator. Therefore, for now, ORC advises that Jeff **not** agree to be Site Manager. (Brooke: Padma said to tell you that we will look at other options and get back to you very soon with advice for Oakland County and how they should proceed with necessary modifications to the loan agreement). Thanks. Tom Turner LAN or 312/886-6613

----- Forwarded by Thomas Turner/R5/USEPA/US on 06/03/2004 12:38 PM -----

Padmavati Klejwa/R5/USEPA/US

06/02/2004 11:18 AM

To Brooke Furio/R5/USEPA/US@EPA

Brooke Furio/R5/USEPA/US@EPA, Debbie Regel/R5/USEPA/US@EPA, Jeffrey

cc Kimble/R5/USEPA/US@EPA, Joseph Dufficy/R5/USEPA/US@EPA, Thomas
Turner/R5/USEPA/US@EPA

Subject Re: Sanicem Landfill - BRG loan dox

Tom - if Jeff will be the Site Manager for Oakland, as Brooke has proposed here, then Jeff will have access to everything that Oakland is entitled to get as the lender and as the lead agency in a superfund cooperative agreement (for a non-time critical removal). Will that work? - pgb

Padmavati G. Bending
Associate Regional Counsel
U.S. EPA, Region 5, ORC
(312) 353-8917
Brooke Furio/R5/USEPA/US

 **Brooke Furio/R5/USEPA/US**


06/01/04 09:37 PM

To Padmavati Klejwa/R5/USEPA/US@EPA

Debbie Regel/R5/USEPA/US@EPA, Jeffrey Kimble/R5/USEPA/US@EPA, Thomas

cc Turner/R5/USEPA/US@EPA, Joseph Dufficy/R5/USEPA/US@EPA, Brooke
Furio/R5/USEPA/US@EPA

Subject Re: Sanicem Landfill - BRG loan dox



Actually Padma, Oakland County can ask EPA to serve as the Site Manager instead of hiring that expertise or contracting for it. As you know most of our BCRLF recipient choose the latter and contract out the expertise to serve as the site manager. However, in some cases the State assigns a site manager through a State run voluntary cleanup program. This was Oakland County's original plan as well as contracting out a peer review of the final remedy. Now, Oakland County can utilize Jeff as their site manager/OSC. I have already spoken to them about it and they are happy to do it since it will save them money, and they feel more comfortable knowing USEPA is providing oversight on this project. So the loan document can ask that the borrower to submit a written request for extension of the dates prior to exceeding any set deadlines. The loan doc should instruct the borrower to send the written request to the Site Manager for approval. I will have Oakland County send Jeff a letter requesting that he serve as site manager for the project so that it is official. I have done this in Minnesota, where Hennepin County formally asked the MPCA VIC project manager to serve as the site manager for the Hennepin County BCRLF. I am in Columbus, OH today and tomorrow. I will be back in the office on Thursday if you have any questions.

Thanks,

Brooke Furio

USEPA Region 5
Cleveland Office
Brownfield & Early Action Section
25089 Center Ridge Rd.
Westlake, Ohio 44145-4170
Phone (440) 250-1705
Fax (440) 250-1750
Padmavati Klejwa/R5/USEPA/US



Padmavati Klejwa/R5/USEPA/US

06/01/2004 06:54 AM

To

Subject Re: Sanicem Landfill - BRG loan dox

Jeff - thanks for your comments. On the written request for an extension, since the loan document is between BRG and Oakland County (who is acting as the lead agency), the extension request has to go to Oakland County. I don't want EPA's role in this document to overshadow Oakland's -- I don't know how that would impact the grant but it would not be good. Anyway, we can

make sure BRG goes to Oakland for approval and that we (thru Brooke, who will coordinate with you) will work with Oakland on any requests for extension. - pgb

Padmavati G. Bending
Associate Regional Counsel
U.S. EPA, Region 5, ORC
(312) 353-8917

-----Jeffrey Kimble/R5/USEPA/US wrote: -----

To: Padmavati Klejwa/R5/USEPA/US@EPA
From: Jeffrey Kimble/R5/USEPA/US
Date: 06/01/2004 08:30AM
cc: Brooke Furio/R5/USEPA/US@EPA, Debbie Regel/R5/USEPA/US@EPA, Thomas Turner/R5/USEPA/US@EPA
Subject: Re: Sanicem Landfill - BRG loan dox

Looks good. With the deadline (I think 7 days is appropriate), we need to also include that they must submit a written request for extension of the dates prior to exceeding any set deadlines. EPA will determine if an extension to the dates is appropriate. Other than that it is fine with me once the changes are implemented.

Tom, any other concerns?

Jeff Kimble, On-Scene Coordinator
U.S. EPA, Region 5
9311 Groh Road
Grosse Ile, Michigan 48138
(734) 692-7688 office
(734) 740-9013 cell
Padmavati Klejwa/R5/USEPA/US

**Padmavati
Klejwa/R5/USEPA/US**
05/28/2004 02:38 PM

To: Thomas Turner/R5/USEPA/US@EPA

To

ccBrooke Furio/R5/USEPA/US@EPA, Jeffrey Kimble/R5/USEPA/US@EPA,
Debbie Regel/R5/USEPA/US@EPA
Brooke Furio/R5/USEPA/US@EPA, Jeffrey Kimble/R5/USEPA/US@EPA,
Debbie Regel/R5/USEPA/US@EPA

bcc

Fax to

SubjectRe: Sanicem Landfill - BRG loan dox

Tom - do you have an idea when you'll get back to me? I'm gone after early afternoon on the 7th; Brooke is planning to visit Oakland County the following week. We'd like to pass on the redrafting comments sooner rather than later.

Brooke - I'm not willing to redline Oakland County's loan document since I'm doing their legal work and I don't represent them. We can pass on the comments I've made, along with the letter from BRG to Tom (where they list all the documents they have on this site) and then Oakland can talk to BRG about how to draft the changes.

But, first, the enforcement folks need to give us some feedback. - pgb
Padmavati G. Bending
Associate Regional Counsel
U.S. EPA, Region 5, ORC
(312) 353-8917

-----Thomas Turner/R5/USEPA/US wrote: -----

To: Padmavati Klejwa/R5/USEPA/US@EPA
From: Thomas Turner/R5/USEPA/US

Date: 05/19/2004 03:10PM

cc: Brooke Furio/R5/USEPA/US@EPA, Jeffrey Kimble/R5/USEPA/US@EPA, Debbie Regel/R5/USEPA/US@EPA.

Subject: Re: Sanicem Landfill - BRG loan dox

Thanks Padma. Jeff and I will each take a look at this, talk to our enforcement specialist, and get back to you. -Turner
Padmavati Klejwa/R5/USEPA/US

**Padmavati
Klejwa/R5/USEPA/US**
05/19/2004 03:05 PM

To
Brooke Furio/R5/USEPA/US@EPA, Thomas
Turner/R5/USEPA/US@EPA, Jeffrey
Kimble/R5/USEPA/US@EPA
cc
bcc
Fax
to

Subject
Re: Sanicem Landfill - BRG loan dox

Brooke, Tom and Jeeff - I've looked at the last version of the Oakland County-Brown Road Group LLC loan document I have (I've attached it - I'm checking if it is the same as what Brooke sent last week) and I suggest the following changes to accomodate the need for an expanded workplan. I note that the loan document already provides that funds will not be disbursed until after the Action Memo is reviewed and approved by the Lender and that the proceeds are limited to approved removal actions set forth in the Work Plan. Since Brooke will already work closely with Oakland on reviewing the workplan and the Action Memo, that will be the way we ensure that the cleanup that happens is the one SF is happy with.

Page 6, Section 1.11, Loan Proceeds - I don't know why I didn't catch this before, but this section needs to be changed. They currently will disburse all the funds once the Action Memo is approved and BRG requests the funds. The disbursement has to be on a

schedule or on a reimbursement basis unless Oakland and BRG can justify an upfront disbursement.

Page 8, Section 2.01 - add the MDEQ data from 2004 to this list

Page 10, Section 3.01, E. At the end of this sentence on the sign, they need to add "the sign will include appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign shall comply with the requirements in 40 C.F.R., Part 35, Subpart O."

Page 10, Section 4.04 - EPA needs to be added to the list of folks who receive these monthly and annual reports. The documents should go to both Brooke Furio and Jeff Kimble - their names and addresses should be added in Section 8.03 (page 16) so this section can just reference the U.S. EPA, Region 5 contacts listed in the notices section.

Page 13, Section 4.17 - Notification of work completion needs to go to EPA also.

Page 14, Section 5.01 - Oakland County needs to add another default condition - They need to add that missing a deadline in the workplan by {here?s where I need Jeff, Tom and Brooke?s input - how many business days - 5, 7, 10, ?} xx days. And they need to say that this default can occur and be enforced without notice of default from the Lender.

Padmavati G. Bending

Associate Regional Counsel

U.S. EPA, Region 5, ORC

(312) 353-8917



ATTI49XU

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**BROWNFIELDS CLEANUP REVOLVING LOAN FUND
LOAN AGREEMENT
BETWEEN**

BROWN ROAD GROUP, LLC

AND

OAKLAND COUNTY

THIS LOAN AGREEMENT (this "Agreement") is entered into as of the ____ day of November, 2003, by and between the **BROWN ROAD GROUP, LLC** ("BORROWER"), a Michigan limited liability company with its principal office at 115 South Main Street, Suite 300, Royal Oak, Michigan, and **OAKLAND COUNTY**, a Michigan county, organized and existing pursuant to Act 139, Public Acts of Michigan, 1974, whose principal address is 1200 N. Telegraph Road, Pontiac, Michigan 48341 ("LENDER").

RECITALS

Borrower is a Michigan corporation and the fee owner of 143 acres of certain real property located in the City of Auburn Hills and Township of Orion in Oakland County, Michigan (the "Property"). The Property is legally described in Exhibit A attached.

The Borrower, has and continues to engage in removal actions on the real property owned by the Borrower, which is generally described in Exhibit B (the "Action Memo").

In order to induce Lender to make a loan, Borrower has executed concurrently herewith a promissory note in the form of Exhibit C attached hereto (the "Promissory Note") a mortgage securing payment of the note in the form of Exhibit E ("Mortgage"), and an obligation to repay the Loan Funds by execution of a Loan Guaranty ("Guaranty"), attached hereto and made a part hereof as Exhibit D. The Promissory Note, the Mortgage and the Guaranty are collectively referred to herein as the "Loan Documents."

Lender is a recipient of the United States Environmental Protection Agency Brownfields Cleanup Revolving Loan Funds (the "Funds") and is authorized to make certain loans therefrom.

The Property has been identified by the Oakland County Brownfield Redevelopment Authority (OCBRA) as a Brownfield Site in need of environmental removal actions. The OCBRA included the Property in a brownfield plan adopted pursuant to the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, as amended.

Borrower will comply with the requirement of Public Act 451 Part 201 of the Michigan Public Acts of 1994 as amended.

Borrower wishes to borrow from Lender, and Lender is willing to lend to Borrower the amount set forth in the Promissory Note on the terms and conditions contained herein.

NOW THEREFORE, Lender and Borrower, intending to be legally bound,

agree as follows:

ARTICLE I LOAN

1.01 Loan. Lender agrees to make a loan in the amount of Seven Hundred Thousand (\$700,000) Dollars (the "Loan"). The Borrower shall evidence its obligation to repay the Loan Funds by execution of a Promissory Note, a Letter of Credit or a Mortgage and a Loan Guaranty, which attached hereto and made a part hereof. The Promissory Note, Mortgage and the Loan Guaranty shall contain specific terms for the repayment of the Loan Funds. Prior to disbursement of the Loan, and subsequent to the execution of the Action Memo, Borrower shall provide Lender with a standby Letter of Credit for the repayment of the Loan on the fifth anniversary of the date of execution of the Promissory Note or shall provide Lender financial assurance satisfactory to Lender that it can repay the Loan and provide further security with execution of a Mortgage and a Loan Guaranty

1.02 Promissory Note. The obligation of the Borrower to repay the Loan shall be evidenced by the Promissory Note, all terms of which are incorporated herein by reference. The Promissory Note shall mature on the fifth anniversary of the date of execution of the Promissory Note. Upon maturing, any remaining balance owed Lender shall be due and payable. Principal, interest, and late payments, if any, on the Loan are payable in accordance with the terms of the Loan Documents.

1.03 Prepayment Prior to Maturity. Borrower may, without premium, prepay any portion of the principal on the Loan prior to maturity. Lender shall release the Letter of Credit obligation upon payment of the Loan principal.

1.04 Purpose. Borrower shall only use the proceeds of the Loan for activities in the approved removal actions at the Property (the "Work") as set forth in the Work Plan, as the same may be amended, supplemented or replaced from time to time as approved by the Lender, and as determined by the Lender. The Work consists primarily of a leachate and methane gas collection system on the Property as described in the Work Plan attached as Exhibit F. No Work shall be commenced for which the proceeds of this Loan will be utilized unless and until the Action Memo attached hereto as Exhibit B has been reviewed and approved by Lender, and executed by all parties to this Agreement. Nothing in this Agreement shall be construed to require or compel Lender to approve the Action Memo. No interest shall accrue on this Loan unless and until Lender approves the aforementioned Action Memo.

1.05 Contractor Qualifications and Insurance. Borrower affirms that its principal environmental consultant Fishbeck, Thompson, Carr & Huber (the "Contractor") has examined the Property, is fully familiar with local conditions,

and is able to execute the Work. The Contractor shall carry out the Work consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. The Contractor shall possess the appropriate license from the Contractor's state licensing board. The Contractor shall maintain and keep in full force and effect the following insurance: errors and omissions, contractor's pollution and general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance, and workman's compensation insurance.

1.06 Transaction Fees. Lender may, at its option, charge transaction fees in an amount not to exceed One Thousand (\$1,000) Dollars for document preparation and recording and all other services related to this Loan Agreement.

1.07 Loan Collection Services. After 24 months, Lender may, at its option, charge a fee for loan collection services in an amount not to exceed Two Hundred (\$200) Dollars per payment.

1.08 Default. Upon default arising from provisions of Article V, Borrower promises to pay to Lender all collection and attorney's fees and expenses actually incurred by Lender, whether or not litigation is commenced, including, without limitation, penalties and/or fees due under this Agreement.

1.09 Security. As security for Borrower's indebtedness to Lender, Borrower shall give Lender the Loan Guaranty. Borrower acknowledges that a Cooperative Agreement with the U.S. Environmental Protection Agency is the source of all funds loaned hereunder and that the Lender is under no obligation to loan and will not be required to loan any of its own funds.

1.10 Inspection and Right to Stop Work. Lender shall have the right, but not the obligation, to enter the Property and inspect the Work during its course and within thirty (30) days following completion of the Work. Borrower shall provide notice to Lender at least ten (10) business days prior to completion of the Work. Lender shall select a Site Manager. The Site Manager will review and inspect the Work in coordination with the Borrower's Project Coordinator. Lender may stop the Work if it is not satisfactory or not substantially in accordance with the plans and order work replacement at Borrower's expense. Lender shall have the right, but not the obligation, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Agreement upon written notice of at least thirty (30) days to Borrower and an opportunity to cure. The notice shall include a clear description of the proposed cure and the approximate cost of the same. Borrower recognizes that the Site Manager has the ability to stop Work immediately in the event of an imminent and substantial threat to human health or the environment. Lender's actions under this subsection shall not be deemed to create any ownership or operator status as that term is defined under the environmental laws set forth in Section 4.07 of this Agreement; and, furthermore, Lender shall be deemed to be

a "response activity contractor" under Part 201 of Public Act 451 of the Michigan Public Acts of 1994, as amended, for any actions it does take under this subsection.

1.11 Loan Proceeds. Loan proceeds will be made available only after the Action Memo is executed by all the parties hereto and shall only be used to fund Borrower's Work performed after the effective date of the Action Memo. Once the Action Memo is properly executed loan proceeds shall be disbursed in its entirety upon Borrowers request.

1.12 Adherence to Project Budget and Schedule

The Work Plan shall include a Project Schedule and Project Budget, which shall be reviewed and approved by Lender. Borrower agrees to keep all expenditures from proceeds of the Loan within the approved Project Budget, and to complete the work within the Project Schedule. Borrower agrees to obtain Site Manager's and Lender's prior approval of any substantive changes in the Work, the Project Budget, or the Project Schedule. Such approval(s) shall not be unreasonably withheld or delayed.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.01 Environmental Warranties. Borrower represents and warrants that:

- A The Property is not listed or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency.
- B Borrower did not generate or transport hazardous substances, pollutants or contaminants at or to the Property.
- C Borrower acquired the Property after the disposal or placement of hazardous substances, pollutants and contaminants on the Property and has not caused, contributed to, permitted or exacerbated the release of such substances, pollutants or contaminants on or from the Property. Borrower is not otherwise a responsible person as defined in Michigan Public Act 451, Part 201 of the Michigan Public Acts of 1994.
- D Borrower is not aware of any environmental contamination at the property other than that reflected in the following documents (the "Project Documents") that have been supplied by Borrower to Lender for Lender's review:

1. Bald Mountain Land Preserve, Oakland County, Michigan Proposed Landfill and Remediation Plan (cir. 1980).
2. Soil Testing Services, Inc. Construction Specifications and Operating Procedures Sanicem Landfill (March 1982).
3. EPA Hazardous Site Evaluation Division, Field Investigation Team Zone II, Draft Screening Site (September 1990).
4. Hydrogeological Investigation, Sanicem Landfill, Oakland County (January 1994)
5. Risk Assessment Report, Volume I, Human Health Risk Assessment, Sanicem Landfill (June 1995).
6. Scope of Work Summary Sanicem Landfill Site (October 1995).
7. Removal Investigation Report, Sanicem Landfill, Oakland County, Michigan (November 1995).
8. Risk Assessment Technical Memorandum, Sanicem Landfill, Oakland County, Michigan (November 1995).
9. Additional Removal Investigation Activities at the Sanicem Landfill Site (October 17, 1996).
10. Analytical Reports for Sanicem Landfill, Oakland County, Michigan (June 2000).
11. Preliminary Geotechnical Evaluation Report, J. Fons Property, Lapeer and Bald Mountain Roads – Auburn Hills, Michigan (October 2000).
12. Part 201, Act 451, Baseline Environmental Assessment of Former Sanicem Landfill (May 21, 2002).
13. Revised Act 381 Work Plan to Conduct Eligible MDEQ response Activities for the Former Sanicem Landfill City of Auburn Hills (August 29, 2002)
14. Revised Act 381 Work Plan to Conduct Eligible MDEQ Response Activities for the Former Sanicem Landfill Orion Township (August 29, 2002).
15. Interim Report of Findings of Methane Investigation and

Remediation of the Former Sanicem Landfill (October 9, 2003)

16. Letter from Ben Matthews, MDEQ regarding site conditions dated October 20, 2003.

2.02 Legal Status. Borrower is a Michigan limited liability company validly existing under the laws of the State of Michigan.

2.03 Interest in Property. The Borrower represents and warrants that it is the fee owner of the Property, and that it will remain the fee owner until the completion of the Work.

2.04 No Violation. The making and performance by Borrower of this Agreement does not violate any provision of federal, state or local law, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

2.05 Authorization. This Agreement, the Promissory Note, the Mortgage and the Loan Guaranty have been duly authorized, executed and delivered and are valid and binding agreements of Borrower.

2.06 Litigation. Presently, there are no pending or threatened actions or proceedings before any court or administrative agency against the Borrower or the Property.

2.07 Correctness of Financial Statement. Borrower represents and warrants that it will present financial statements to the Lender that are the full and complete financials presented to Borrower's principal financial lender on this Project, if a Letter of Credit for repayment is not presented.

2.08 Survival. The above-listed representations and warranties shall survive the execution of this Agreement.

ARTICLE III CONDITIONS PRECEDENT

3.01 The obligation of Lender to make the Loan contemplated hereunder is subject to the fulfillment of the following conditions:

- A. **Approval of Lender's Counsel.** All legal matters incidental to Lender's commitment to issue the Loan hereunder shall be satisfactory to Lender's counsel, including the form, validity and enforceability of this Agreement and Exhibits C (Promissory Note),

D (Guaranty) and E (Mortgage).

- B. **Compliance.** The representations and warranties contained herein shall be true on and as of the date of the signing of this Agreement with the same effect as though such representations and warranties had been made on and as of such date, and on such date no Event of Default as defined in Article V herein, and no condition, event or act which, with the giving of notice or the lapse of time or both, would constitute an Event of Default shall have occurred and be continuing or shall exist.
- C. **Identification of Contractors.** Borrower shall submit within fifteen (15) days after execution of the Action Memo to Lender a list identifying all of Borrower's contractors and subcontractors for the Work.
- D. **Cooperation With Audit and Public Participation Requirements** . Borrower agrees to cooperate fully with an audit of the Loan and the Work, if an audit is performed. Borrower shall also cooperate with and assist Lender in responding to and/or addressing any significant comments received on the Work Plan or Action Memo when they are published for public comment.
- E. **Erect Sign.** Borrower agrees to erect a sign on the Property, approved by Lender, stating that the Work is being financed in part by U.S. EPA BCRLF Funds and the Lender.
- F. **Issuance of Action Memo.** Lender shall be under no obligation to advance the loan proceeds unless and until the Action Memo is fully executed by all the parties hereto.

ARTICLE IV AFFIRMATIVE COVENANTS

4.01 Covenants. Borrower covenants to do the following items indicated in this Article for so long as amounts remain due under the Promissory Note.

4.02 Punctual Payment. Borrower shall punctually pay the principal of and any interest on the Promissory Note at the times and place and in the manner specified in the Promissory Note.

4.03 Accounting Records. Borrower shall document all the uses of the proceeds of the Loan, and maintain adequate books and accounts in accordance

with generally accepted accounting principals consistently applied. Borrower shall permit any representative of Lender at any reasonable time to inspect, audit and examine such books. Borrower shall maintain documentation on the use of the proceeds of the Loan for ten years after completion of removal actions supported by loan or until the resolution of any litigation, claim, negotiations, audit, cost recovery or other action involving the documents, whichever is longer and shall obtain approval of Lender prior to destroying such documentation.

4.04 Annual and Monthly Reports. The Borrower shall furnish annual reports that document that it is in material compliance with all relevant federal and state environmental regulations during the life of the loan. Once the Action Memo is fully executed, the Borrower shall also provide to Lender's Site Manager monthly status reports on the first day of each month, which provide the following information: a) the Work done in the last thirty (30) days; b) the Work to be performed in the next thirty (30) days; c) any substantive concerns encountered in the performance of the Work or in adherence to the Project Schedule or Project Budget; and d) proposed solutions for concerns encountered.

4.05 Annual Financial Reports. Borrower shall furnish annual financial statements, including basic accounting and control mechanisms to track legitimate use of the proceeds of the Loan and document that such proceeds are put to authorized uses. Borrower's accounting system must track site-specific costs, cost activity and operable unit (if applicable). Financial statements include: (a) income statements; (b) balance sheets; and (c) cash flow statements.

4.06 Other Documentation. Borrower shall furnish such other information as Lender may from time to time reasonably request.

4.07 Compliance With All Laws. Borrower shall carry out the Work in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) ("CERCLA"); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 C.F.R. Part 31; Cooperative Agreements for Superfund Response Actions, 40 C.F.R. Part 35, Subpart O; the National Oil and Hazardous Substances Contingency Plan ("NCP"), and 40 C.F.R. Part 300. Any and all terms in this document, which are defined in CERCLA and/or NCP, shall have the same meaning in this Agreement as in CERCLA and/or NCP.

4.08 Compliance With Executive Order 11246. Borrower shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts.

4.09 Davis Bacon Act. Borrower shall carry out the Work in accordance with the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 U.S.C.

§§276a to 267a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104(6)). Compliance with the Davis-Bacon Act requires payment of federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with loan funds. Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

4.10 Insurance. In addition to Contractor's insurance requirements, Borrower shall maintain and keep in full force and effect insurance of the types and amounts necessary to protect the security for Borrower's indebtedness to the Lender, including without limitation, commercial general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation insurance (if applicable), and fire insurance for the value of the property. Insurance coverage shall be primary in relation to any other insurance or self-insurance available to the Lender. Insurance shall be placed with an insurer with an A.M. Best's Rating of no less than A:VII. The Lender shall be named Additional Insureds. Borrower shall deliver to Lender from time to time at Lender's request certificates of insurance or policies setting forth all business insurance then in effect. Policies shall be endorsed to provide that the Lender shall be provided with written notice of thirty (30) days for any cancellation, suspension or reduction in limits.

4.11 Taxes and Other Liabilities. Borrower shall pay and discharge when due any and all indebted obligations, assessments, taxes (real and personal), including federal and state payroll and income taxes, except such as Borrower may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

4.12 Litigation. Borrower shall promptly give notice in writing to Lender of any litigation pending or threatened against Borrower or the Property.

4.13 Non Discrimination and Equal Opportunity. Borrower agrees to comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, Borrower shall undertake good faith efforts in compliance with 40 C.F.R. § 35.6580 to give opportunities to qualified Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. Borrower shall submit a report of such efforts in a manner acceptable to the Lender.

4.14 Debarment and Suspension. Borrower certifies that Borrower and, to its knowledge, Contractor:

- A are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or

local (hereinafter "public") transactions;

- B have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- C are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Section 4.12 (b) hereof; and
- D have not within the preceding three years had a public transaction terminated for cause or default.

4.15 Environmental Compliance. Borrower certifies that it is not now, and has not in the past, been subject to any penalties resulting from environmental non-compliance at the Property. Borrower further certifies that it will conduct removal actions in accordance with Michigan Public Act 451, Part 201 of the Michigan Public Acts of 1994, and will modify the removal actions for which the proceeds of this Loan are utilized, as required by the Lender based on unforeseen site conditions or public involvement requirements.

4.16 Notice to Change in the Work. Borrower shall immediately report to Lender in writing any potential changes to the Work described in Section 1.04 hereof and the discovery of hazardous substances, pollutants or contaminants not identified in the Work or Project Documents. The Site Manager and Lender shall approve all changes or modifications to the Work or related documents prior to such change or modification becoming effective.

4.17 Completion of Project. Borrower agrees to complete the Work within the Project Schedule. Not later than thirty (30) days after construction activities are complete, Borrower shall notify Lender that the Work is complete. The notice shall contain a certification and documentation necessary to establish the following:

- A. The Work was conducted in accordance with the Work Plan, the Action Memo and the Loan Document. Borrower shall promptly supply supplemental information as needed by the Lender.

- B. All proceeds of the Loan were expended for eligible project costs.
- C. That the Work, as implemented, is protective of human health and the environment.

ARTICLE V EVENTS OF DEFAULT

5.01 Default. The following shall constitute Events of Default:

- A Default by Borrower in any payment when due of principal or interest under the Promissory Note, which default is not cured within thirty (30) days of receipt of a notice of default.
- B Any representation or warranty made by Borrower hereunder or in the Loan Documents proves false or misleading in any material respect.
- C Use of the proceeds of the Loan for purposes other than those stated in Section 1.4 or approved in writing by Lender.
- D Default by Borrower in the performance of any other term, covenant or agreement contained herein, or in the Loan Documents, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided Borrower promptly commences such cure and thereafter diligently pursues such cure to completion).
- E Default by Borrower under the terms of any agreement or instrument pursuant to which Borrower has borrowed money from any person or entity for the Property, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided Borrower promptly commences such cure and thereafter diligently pursues such cure to completion).
- F Failure of Borrower to satisfy any judgment or remove any levy or other process against the assets of Borrower within thirty (30) days after the entry or levy thereof, or at least five (5) days prior to the time of any proposed sale under any such judgment or levy.
- G The breach by guarantor of any of the financial covenants in the Loan Guaranty, which breach is not cured within thirty (30) days of receipt of a notice of default.

5.02 Acceleration. Notwithstanding anything to the contrary in the Promissory Note, upon an Event of Default, any indebtedness of Borrower under

this Agreement and the Promissory Note shall, at Lender's option and without notice, become immediately due and payable without presentment, notice or demand, all of which are hereby expressly waived by Borrower, and the obligations, if any, of Lender to permit further borrowing hereunder shall immediately cease and terminate.

5.03 Secure Site. In the event of default, Borrower shall secure the site. The cost of securing the site is the responsibility of the Borrower. If Borrower fails to secure the site within 24 hours, Lender may, but shall not be obligated to, do so at the Borrower's sole cost.

ARTICLE VI REMEDIES OF LENDER

6.01 Event of Default. Upon the occurrence of an Event of Default, Lender may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Article VI and all other remedies available to the Lender under the Loan Documents, at law or in equity, at any time and from time to time. Such exercise shall not constitute a waiver of any of Lender's rights or remedies thereunder, whether or not the indebtedness evidenced by the Promissory Note shall be due and payable and whether or not Lender shall have instituted any actions for the enforcement of its rights under the Promissory Note. Failure of Lender to exercise any rights or remedies at any time shall not constitute a waiver of any of its rights or remedies. Lender may exercise any and all of the rights, powers, privileges and remedies provided in the Loan Documents.

6.02 TIF Recapture. In the event of a default under Article V, Lender shall have the right as allowed by law to retain and subordinate to the security previously given to Huntington Bank, or require that the local taxing jurisdictions retain, any Combined County taxes that would otherwise be used to reimburse Lender for eligible costs pursuant to any approved Brownfield plan for the Sanicem Site (including the portions located in Orion Township and Auburn Hills), and such right shall continue until the loan (principal and interest) is paid in full. Borrower agrees to execute any and all documents that Lender might reasonably require to implement this provision. As allowed by law, any amounts so retained shall be forwarded to the Oakland County Treasurer and shall be set off against the outstanding principal and interest on the Loan.

ARTICLE VII INDEMNIFICATION

7.01 The Borrower shall, at Borrower's expense, defend, indemnify, and otherwise hold Lender, its officers, employees and agents harmless against any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation, or other entity and arising out of or caused by Borrower's actions or inactions with regard to the Property, or by the use of the

proceeds of the Loan. Borrower shall pay Lender upon demand all claims, judgments, damages, lawsuits or expenses (including legal expenses) incurred by Lender as a result of any legal action arising out of or caused by any of the Loan Documents, or by the use of the proceeds of the Loan.

ARTICLE VIII MISCELLANEOUS

8.01 Waiver. No delay or failure of Lender, or any holder of the Promissory Note exercising any right, power or privilege hereunder or in the Loan Documents shall affect such right, power or privilege; nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of Lender hereunder are cumulative and not exclusive. Any waiver, permit, consent or approval of any kind by Lender, or any holder of the Promissory Note, of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

8.02 Successors. This Agreement shall be binding upon the permitted assigns or successors of Borrower and Lender. This Agreement shall not be assigned or transferred by Borrower without the written consent of Lender and any purported assignment or transfer without such prior written consent shall be void.

8.03 Notices. Any notice, consent, waiver, request or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given (a) on the same day if delivered personally, (b) three business days after mailed if delivered by certified or registered mail, return receipt requested, postage prepaid, (c) one business day after dispatched if dispatched by nationally recognized overnight delivery service, or (d) on the same day if sent by telecopier (subject to obtaining a confirmation receipt), in any event, addressed to the party's address as follows:

To the Lender:

Martin J Seaman
Manager
Oakland County
1200 N. Telegraph Road
Pontiac, MI 48341

Counsel:

Keith J. Lermينياux
Deputy Corporation Counsel
Department of Corporation Counsel
1200 N. Telegraph Road, Dept. 419
Pontiac, MI 48341-0419

To the Borrower:

Fred Gordon
Brown Road Group, LLC
115 S. Main Street
Suite 300
Royal Oak, MI 48067

Counsel:
Paul F. Bohn
Fausone, Taylor & Bohn, LLP
41820 W. Six Mile Road, Suite 103
Northville, MI 48167

Either party may, upon prior notice of seven (7) calendar days, change its address for all subsequent notices.

8.04 Attorney's Fees. Borrower will reimburse Lender for all costs, expenses and reasonable attorneys' fees expended or incurred by Lender in enforcing this Agreement, in actions for declaratory relief in any way related to this Agreement, or in collecting any sum which becomes due the Lender on the Promissory Note.

8.05 Exhibits. All exhibits mentioned herein shall be deemed incorporated herein by reference as though fully set forth herein.

8.06 Relationship. The relationship of Lender and Borrower is that of lender and borrower. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership or joint venture hereby.

8.07 Entire Agreement. The terms and conditions of this Agreement, all exhibits attached hereto and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any prior loan agreements, oral or written, regarding the subject matter of this Agreement between Lender and Borrower. This Agreement may not be amended or modified without the written consent of the parties hereto.

8.08 Inconsistency. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this Agreement shall control except where federal statutes or regulations are controlling.

8.09 Severability. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

8.10 Governing Law. The Loan Documents shall be construed in accordance with and governed by the laws of the State of Michigan except where superceded by federal statutes or regulations.

EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

WITNESSES:

FOR THE BORROWER:

BROWN ROAD GROUP, LLC

By:

**FRED GORDON
MANAGER**

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____

Notary Public, Oakland County, MI
My Commission Expires: _____

EXECUTION

WITNESSES

FOR THE LENDER:

OAKLAND COUNTY

INITIATIVE

By:

**THOMAS LAW
CHAIRMAN**

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Oakland County.

Notary Public, Oakland, MI
My Commission Expires: _____

**EXHIBIT A
LEGAL DESCRIPTIONS**

EXHIBIT B

ACTION MEMO

EXHIBIT C

PROMISSORY NOTE

BROWNFIELD CLEANUP REVOLVING LOAN FUND
PROMISSORY NOTE

\$700,000
2003

November 1,

Pontiac, Michigan

November 1, 2003

FOR VALUE RECEIVED the undersigned, **BROWN ROAD GROUP, LLC**, (the "Borrower"), hereby promises to pay to the order of, **OAKLAND COUNTY**, (the "Lender") the principal sum of **SEVEN HUNDRED THOUSAND (\$700,000) DOLLARS** (hereinafter referred to as the "Loan Obligation") and interest on the Loan Obligation in the manner and on the dates indicated in this Promissory Note. The amount of interest payable shall be calculated on the outstanding principal balance at an interest rate of the prevailing six-month Treasury Bill rate and that such rates shall be computed quarterly. **[KL please provide alternative language – the language should be in the approved OCBRA BRP Plan for the Orion Twp. Portion of the site – if not pls advise .]**

In the event that the principal amount of this Note is not repaid in full upon maturity, or in the event that the Borrower does not make timely payments on the payment dates indicated herein, then interest shall be charged at the rate of **TEN (10 %)** per year from the date of the default of payment until such payments are made or until the indebtedness evidenced by this Note is repaid in full.

Lender shall send to Borrower monthly statements indicating the interest and principal, if any, due. Said statements shall be mailed to Borrower at least twenty-one (21) days before the due date of the payment.

The Loan Obligation shall be payable at the offices of the Borrower located at **1200 N TELEGRAPH ROAD, PONTIAC, MICHIGAN 48341** or at such other place as may be designated by the Lender from time to time, in accordance with the following conditions.

This Note evidences a loan to the Borrower from the Lender under the Brownfield's Cleanup Revolving Loan Fund ("BCRLF") Program of the U. S. Environmental Protection Agency for the exclusive purpose of carrying out a removal action to address the hazardous substances identified on the Property located in Exhibit A, of the Loan Agreement.

This Note is subject to the terms and conditions the Brownfield's Cleanup Revolving Loan Fund Agreement (the "Agreement") and the Loan Guaranty ("Guaranty") all of which are executed concurrently with this Note. Borrower is

entitled to the benefits and is subject to the conditions of all three documents. All the terms, conditions and provisions of the Agreement and the Guaranty are, by this reference thereto, incorporated herein as part of this Note, and shall control in the interpretation and enforcement of this Note.

The terms of this note is twenty-four (24) months ("Initial Term"). During the Initial Term, interest only payments shall be due on the fifteenth (15th) day of each month.

If this note is not paid in full by the twenty-fourth (24) month, an administration fee of \$50,000 shall be added to the principal.

If this note is not paid in full within the Initial Term, the interest rate shall adjust to 2% above prime and interest and principal shall be due monthly based on a three (3) year amortization.

Each year after the Initial Term the note remains outstanding, an additional \$25,000 administration fee shall be added to the principal.

This note must be paid in full by the sixtieth (60) month after execution of this note.

In addition to the foregoing, the Borrower hereby promises to pay to the full extent required by the Agreement all costs and expenses of collection incurred in connection with any default by the Borrower hereunder and all other payments required to be made by the Borrower pursuant to the Agreement.

In the event the Borrower should fail to make any of the payments required in this Note, such payments so in default shall continue as an obligation of the Borrower until the amount of default shall have been fully paid.

In case of default in this Note or a default or an "event of default", as defined in the Loan Agreement and the Guaranty the entire principal amount of the Loan Obligation together with any interest as provided for herein, at the option of the holder hereof, may be declared immediately due and payable as provided for in the Agreement and the Guaranty with which this Note is paraphed.

The maker of this Note hereby waives presentation for payment, demand, notice of nonpayment and protest, all pleas of division and discussion, and consents that the time of payment may be extended without notice thereof.

This Note is secured by a Guaranty of even date herewith, executed and delivered by maker, hereof, the terms and conditions of which said Guaranty are made a part hereof and shall control in the interpretation and enforcement of this Note.

EXHIBIT D

LOAN GUARANTY

WITNESSES

FOR THE BORROWER:

**BROWN ROAD GROUP, LLC
REDEVELOPMENT AUTHORITY**

By:

Fred Gordon
Manager

Dated:

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This document was acknowledged before me on _____
by on behalf of the Brown Road Group, LLC.

Notary Public, Oakland County, MI
My Commission Expires: _____

EXHIBIT E

MORTGAGE

EXHIBIT F

WORK PLAN

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F:\PFB\Brown Road\Documents\BRG Oakland County LoanDoc kjl markup 102003.doc.rtf